

## REMARKS

The claims are 33-50. Claims 33 and 42 are amended to correct typographical and clerical errors and to provide greater internal consistency to the claims. Claim 33 is also amended to clarify that the elongation of the nonwoven webs is non-elastic. Support for this limitation is found at page 11, lines 21-23 of the specification. No new matter is raised. Claim 50 is newly added and comprises the subject matter erroneously presented as claim 36 in the previous amendment. Consideration and allowance of claims 33-50 is respectfully solicited.

### Claim Objections

Claim 42 is objected to under 37 CFR §1.75(c) as being of improper dependent form for failing to further limit the subject matter of a previous claim. Claim 42 has been amended to correct the dependency of the claim.

Reconsideration is solicited.

### Claim Rejections

Claims 33-49 are rejected under 35 USC §112, as being indefinite for failing to particularly point out and distinctly claim the subject matter. Claim 33 has been amended to correct an error in antecedency. Claim 36 appeared twice. The first occurrence of claim 36 has been re-numbered as claim 50 in accordance with the Office suggestion. This also renders moot the concerns regarding claim 37. An error in antecedent basis in claim 42 is also corrected.

Reconsideration of the rejections under 35 USC §112 are respectfully solicited.

Claims 33-49 are rejected under 35 USC §102(e) as being anticipated by Shawver et al (U.S. 6,649,548) in view of Hassenboehler et al. (U.S. Re 35-206). Because the Office is relying on the combination of references, Applicants assume that the rejection is one based on obviousness instead of anticipation and will thus treat the rejection as having been advanced under 35 USC §103.

The Office states that the laminate of Shawver reads on the claimed laminate, except that Shawver does not disclose the use of heat consolidated nonwoven webs and the prior art does not explicitly teach the elongation and ultimate force to break values recited in the claims. Nevertheless, the Office concludes that it would have been obvious to use the nonwoven webs of Hassenboehler in the laminates of Shawver and that it is reasonable to presume that the laminates would inherently possess the claimed properties because of the similarity of use and other reasons. The rejection is respectfully traversed.

Initially, Applicants take issue with the combination effected by the Office. The Office cites as motivation for the combination the desire to take advantage of the increased elasticity imparted by the Hassenboehler process. However, the Office combination overlooks that the enhanced tear resistance of the Shawver laminates is specifically related to the use of particular nonwoven webs taught by the reference. There is no disclosure, suggestion or teaching that the nonwoven webs of Shawver can even be treated in the Hassenboehler process. Note, for example, the disclosure at Column 6, lines 1-28 of Hassenboehler indicating that certain precursor webs are not suited for processing in accordance with the Hassenboehler method. Nor is there any teaching or disclosure that the webs, if treated, or that an outright substitution of nonwoven webs would not negatively impact the tear resistance that was so important to Shawver. Accordingly, there

is no basis for concluding that the combination would be obvious because there is no reasonable assurance that the combination can even be effected, let alone that the combination would not reduce or eliminate important attributes of the reference.

Even assuming the combination of references is otherwise proper, the combination still fails to establish a *prima facie* rejection. In particular, the combination fails to teach or suggest two specific features of the claims; namely, that the nonwoven webs are heat consolidated but not heat set and that the laminate has an elongation at break at least equal to that of the combined elongation at break of the individual nonwoven webs.

With regard to the limitation that the nonwoven webs are not heat set, Hassenboehler (Column 8, lines 30-35) specifically teaches that the enhanced elasticity is obtained only in the heat consolidated and heat set webs. Thus, if the skilled artisan wanted to obtain the benefit of the enhanced elasticity as suggested by the Office, the artisan would not skip the heat setting step. Moreover, the nonwoven webs used in the present laminates are not elastic. As stated on page 11, lines 21-23 of the specification, the consolidation of the nonwovens should be sufficient to provide a "*nonelastic elongation range* of from about 20% to about 200%" (emphasis added). This feature has been added to claim 33.

With all respect to the Office position that such a feature is inherently present in the laminates formed by combining Shawver and Hassenboehler, applicants respectfully disagree. In comparing the "Grab-CD PL" values in Table 3 with that of Table 4 in Shawver, it is apparent that the force to break the laminate (Table 4) is not equal to or greater than the sum of the force to break of the individual nonwoven webs. Specifically, the Ziegler-Natta catalyzed nonwovens had force to break of 6507 grams and the metallocene catalyzed nonwovens had a force to break of 5624 grams. Thus, to meet the

claims, the laminates would need to have force to break of at least 1,3014 or 1,1218, respectively. However, as seen in Table 4, the force to break the laminates was only 8,441 and 8708, respectively.

Thus, clearly the Office position regarding inherency based on Shawver cannot be sustained. The Office has not identified any passage in Hassenboehler that would lead a skilled artisan to believe that using nonwoven webs treated by the Hassenboehler method would change the results seen in Shawver.

## CONCLUSION

The pending claims recite a combination of features that are not taught, disclosed or suggested by the prior art. Reconsideration and allowance of all claims in prosecution is respectfully solicited.

If the Office is not inclined to allow the claims, then Applicant respectfully request an interview to discuss any remaining issues with the application at the convenience of the Examiner.

Respectfully Solicited,



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